U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

File: WAC 01 283 58934 Office: CALIFORNIA SERVICE CENTER Date: MAY 7 2003

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the pertinent regulations at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

The petitioner is an optical engineer. At the time he filed the petition, the petitioner worked at Phaethon Communications. In January 2002, he accepted a new position at Sunrise Telecom, Inc.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify

as an alien of extraordinary ability. The petitioner has submitted evidence which, he claims, meets the following criteria.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

Counsel describes the petitioner's work:

> [The petitioner] has been dedicated to the frontier research, fabrication, and application of III-Nitride semiconductor and UV-blue optoelectronic devices. [The petitioner] helped to identify the fundamental problems in making these devices, and he developed the means to circumvent these difficulties based on his optical and electrical characterization, thus ma[king] original contributions of major significance to the field.

Counsel explains that optical devices using III-Nitride semiconductors produce green-blue-UV light, making it possible to create full-color optoelectronic devices (other semiconductors already produce colors on the red end of the visible spectrum). Counsel states that optoelectronic devices using III-Nitride semiconductors have applications from digital media to traffic lights. Counsel states "[r]esearch on III-Nitride blue lasers was recognized as one of the top ten discoveries of the whole world in 1998." The petitioner did not invent this type of laser; he merely studies the properties of the III-Nitride materials.

The petitioner submits copies of articles from *Laser Focus World*, *Compound Semiconductor*, and *III-Vs Review*, which reported findings by [redacted] and [redacted] group" at KSU. While these articles name the project's leaders, the petitioner's own name does not appear in these articles. Thus, there is no evidence that the reporters who wrote these articles considered the petitioner to be largely responsible for the findings reported in the articles. Because the articles do not identify the petitioner, we cannot infer that the petitioner derived any acclaim as a result of those articles. It is impermissibly broad to conclude that the entire, anonymous "group" achieved acclaim through this collective mention.

Counsel states that "[s]ix experts in physics and electrical engineering have offered advisory opinions" regarding the significance of the petitioner's work. Three of these experts (Professor [redacted] Professor [redacted] and Associate Professor [redacted] are faculty members at Kansas State University (KSU), where the petitioner obtained his doctorate in 2000. Dr. [redacted] was the petitioner's immediate supervisor at KLA-Tencor, where the petitioner worked from May 2000 to May 2001. Dr. [redacted] is the petitioner's immediate supervisor at Phaethon Communications, and Professor [redacted] of the University of Southern California is the founder of that company. Rather than describe the petitioner's specific contributions, many witnesses describe the overall projects, the implication being that because the projects had significant outcomes, involvement in the projects amounts to a contribution of major significance. Often, the witnesses themselves were personally involved in these same projects.

Because all of the witnesses have obvious direct connections to the petitioner, their letters cannot serve as first-hand evidence of wider acclaim. Some of these witnesses assert that the petitioner is "greatly admired world wide" or "regarded as one of the top experts in the world" in his specialty. We do not dispute the sincerity of these remarks, but it remains that the only individuals on record as attesting to such acclaim have close ties to the petitioner. If the petitioner truly does enjoy a global reputation as claimed, ample evidence of this reputation ought to exist outside of the university he attended and the companies where he has worked. Because the plain language of the statute demands "extensive documentation" of national or international acclaim, it cannot suffice to show that the petitioner's professors and employers believe the petitioner enjoys such acclaim. The only independent evidence regarding the petitioner's research consists of articles that never mention the petitioner's name, indicating that he was one anonymous member of a "group" working under the direction of the scientists whose names did appear in the article.

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

Counsel states that the petitioner has written 24 articles. Copies of fifteen articles accompany the petition. The very existence of these articles does not convey acclaim; in many scientific fields, publication is a basic necessity rather than a mark of special distinction (on appeal, counsel acknowledges the phrase "publish or perish" that is often heard in academia). The petitioner's published articles figure heavily in the denial and appeal, and will be discussed further in that context.

The director informed the petitioner that the evidence included in the initial submission was not sufficient to establish eligibility. The director instructed the petitioner to submit additional evidence, and specified some deficiencies in the original submission. In response, the petitioner submits arguments from counsel, new documents, and copies of previously submitted materials.

Counsel asserts that "there have been 26 published materials about the alien's work on III-Nitride semiconductors" in trade publications around the world. While some of these articles had been included in the initial submission, counsel here appears to cite those articles in the context of a previously unclaimed criterion:

> *Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

Counsel states that the articles submitted with the petition, as well as additional articles, "demonstrated that the alien has international acclaim and [that his] achievements have been recognized in the field." As noted above, these articles do not identify the petitioner and therefore they cannot be deemed to be "about the alien" as the regulation plainly requires.

The newly submitted articles are generally similar to the ones previously discussed. The record contains copies of press releases issued by KSU; at least one article specifically cites such a press

release as a primary source of the information contained in the article. If all of these articles derive from KSU press releases (which would explain their overall similarity), and none of the articles name the petitioner, then it would appear that even KSU did not consider the petitioner's contribution significant enough to warrant including his name in the press release.

The petitioner submits copies of previously submitted witness letters, as well as a copy of a previously unsubmitted letter from Professo[redacted] who, like half of the previous witnesses, is on the faculty of Kansas State University. Prof.[redacted] states "[j]udging from the citations of his work by his colleagues [the petitioner] is recognized as having done outstanding work in the field of GaN based blue diode lasers internationally." To establish these citations, the petitioner submits copies of 15 journal articles containing these citations. These citations, by researchers in several countries and at several prestigious US universities, do serve to demonstrate international attention to the petitioner's published work. The bulk of these citations are from a short period in 2000.

The director denied the petition, stating that the petitioner's published work appears to be nothing more than the expected product of his student work. The director further found that the petitioner's evidence, as a whole, does not show that the petitioner has earned sustained acclaim at a national or international level. The director acknowledged the petitioner's witness letters, but also listed their affiliations, by which it is clear that the witnesses are all closely tied to the petitioner.

On appeal, counsel contests the director's finding regarding the petitioner's published work. Counsel correctly observes that an article is not automatically discredited simply because the author was a student at the time he wrote it. Counsel observes that[redacted] received the Nobel Prize for work he conducted while he was still a doctoral student. While this example amply demonstrates that doctoral-level research can have great value, it also highlights a level of acclaim and recognition (the Nobel Prize) which the petitioner does not appear to have approached. The only new documentation submitted on appeal concerns Dr[redacted] prize.

Counsel states that, when judging the petitioner's published work, one factor to consider is the quantity of articles. Counsel states that the petitioner's claimed output of 24 articles within five years "is very impressive for someone in his early stage of the research career considering the short length of the endeavor." The petitioner, however, must show that he is at the top of his field, not merely that group of people who are at an "early stage of the research career." The petitioner's field includes tenured full professors with decades of experience. If we were to judge by sheer quantity of output, many of the petitioner's witnesses have produced substantially more published work than the petitioner. Prof.[redacted] claims authorship of 150 articles, while Prof.[redacted] claims "over 130 journal papers . . . [and] several book chapters." Prof[redacted] claims to have written "4 books and . . . more than 280 technical papers," more than 11 times the petitioner's output of articles.

The director was correct in observing that authorship of scholarly articles does not automatically, without further review, satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(vi). Indeed, counsel states "[w]e concede that virtually all individuals who have done graduate or postgraduate work in a

scientific field will be able to present evidence of authorship of scientific articles." The director, however, appears to have dismissed too thoroughly the value of citations of those articles. Certainly a citation does not qualify as "published material about the alien," but counsel had made no such claim in this proceeding. Rather, counsel properly viewed the citations in the context of establishing the international community's reaction to the petitioner's work. Counsel observes that the petitioner's work has been cited in several different countries. Certainly, these citations demonstrate that the petitioner's work has value to researchers. The record, however, also shows that the impact of an article depends on the frequency of citation; the more an article is cited, the higher its impact. Prof. Edgar, one of the petitioner's witnesses, asserts "[m]y papers are frequently cited in the scientific literature; there were over 75 citations by other researchers to my work last year alone." Background material submitted by the petitioner, from the Institute for Scientific Information (ISI), defines the impact factor of a journal as "a measure of the frequency with which the 'average article' in a journal has been cited in a particular year or period." Other documentation submitted by the petitioner indicates that *Applied Physics Letters*, where the petitioner's most-cited articles have appeared, has an ISI impact factor of 3.03. In other words, the average article in *Applied Physics Letters* is cited about three times per year.

The third-party articles in the record cite six of the petitioner's articles, an aggregate total of 15 times. One article (the oldest one cited, from 1997) was cited four times; two were cited three times; two were cited twice, and one was cited once. While many of the citations appeared in articles published in 2000, some were published earlier. This information demonstrates that only one of the petitioner's articles has, in the several years since it was published in 1997, exceeded the one-year citation average for articles in that journal. Most of the petitioner's cited articles have three or fewer citations after multiple years, well below the journal's average of 3.03 citations per year. Furthermore, three-quarters of the petitioner's claimed 24 articles appear never to have been cited at all. Given the above, the background information supplied by the petitioner appears to undermine the assertion that the petitioner's published work places him at the top of the field or otherwise sets him apart from the great majority of researchers in his specialty.

Counsel states "[i]f the alien's published works are able to impress the six leading experts who submitted the expert opinion letters, they should have the same effect on the Director. However, . . . the Director simply failed to appreciate the significance of the submitted evidence." Counsel's assertion presumes that the petitioner's witnesses are in fact "leading experts" whereas the record does not show that all six of those witnesses are considered leaders in the field. Also, some of those witnesses were in fact co-authors of the petitioner's published articles.

Counsel concludes the brief by stating that the petitioner's published work places him among the small percentage who have risen to the very top of the field. Published articles cannot, alone, establish eligibility. The petitioner initially claimed to have satisfied only two of the ten criteria listed at 8 C.F.R. § 204.5(h)(3). Even if the petitioner had satisfied both criteria, on its face the petition would still not have been approvable. Subsequently, counsel has contended that the petitioner satisfies a third criterion, regarding published material about the alien. This claim is untenable because none of the published material even includes the petitioner's name, much less is primarily "about the alien" as the plain wording of the regulation requires.

The record shows that the petitioner was one member of a research group at KSU, the achievements of which attracted some attention in the trade press and led to useful journal articles. The record does not, however, show that the entire research group achieved collective acclaim as a result of this accomplishment. Whatever recognition the petitioner has achieved has been within the context of this research group at KSU, and such group recognition appears to owe more to the professors leading the group than to the revolving group of graduate students working under those professors. The petitioner's witness letters do not demonstrate any reputation at all, let alone sustained national or international acclaim, outside of KSU and the companies where the petitioner has subsequently worked.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor. Review of the record, however, does not establish that the petitioner has distinguished himself as an optical engineer to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.